IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 21ST AUGUST 2006 / 30TH SRAVANA 1928

WP(C).No. 22123 of 2006(H)

PETITIONER:

ANNAMMA CHACKAPPAN,
AGED 60, CHACKAPPAN,
PERUVANKAL HOUSE, CHELLAD,
KOTHAMANGALAM.

BY ADV. SRI.P.K.BALAKRISHNAN NAIR

RESPONDENTS:

---

1. THE STATE OF KERALA,
REP. BY THE PRINCIPAL SECRETARY (FINANCE),
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE ACCOUNTS OFFICER,
OFFICE OF THE ACCOUNTANT GENERAL (A&E),
M.G.ROAD, P.B.NO.5607,
THIRUVANANTHAPURAM.

3. THE SUB TREASURY OFFICER,
SUB TREASURY, KOTHAMANGALAM.

BY SRI.M.P.PRAKASH, SPL.G.P. (FINANCE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

- - - - - - - - - - - - - - - - - - -

W.P(C) No. 22123 of 2006

- - - - - - - - - - - - - - - - - - -

Dated this the 21st day of August, 2006.

J U D G M E N T

The short question that arises for consideration in this writ petition is whether the respondents are justified in refusing to pay unclaimed family pension to the petitioner for the period from November 1992 to May 2005.

2. It is not in dispute that petitioner had been drawing family pension after the death of her husband in April 1985. She continued to do so till October 31, 1992. It is admitted by the petitioner that she had gone to America in November 1992 to join her sister and has been working there as a Nurse. It is also admitted by her that she returned to India in May 2005 and thereafter submitted Ext.P1 application before respondent No.3 requesting for release of the arrears of pension from November 1992 to May 2005. Though the respondents re-validated the family pension order enabling the petitioner to draw pension from June 2005 onwards, the request made by her for disbursement of the arrears was turned down. According to the petitioner, the arrears would come to Rs.2,38,000/-, which the respondents are bound to pay to her as provided in Rule 136 of Part III KSR. But in Ext.P5 the Government took the view that petitioner was not entitled to claim the arrears. A similar view was taken by respondent No.2 in Ext.P6 also. Petitioner has filed the writ petition for appropriate reliefs in the above facts and circumstances.

3. It is contended by the learned counsel for the petitioner that Rule 136 of Part III KSR empowers the Government to grant arrears of

pension in appropriate cases. According to the petitioner she had gone to America along with her children since no "income or shelter" was available after the death of her husband. Her sister who was working in America as a Nurse had offered to help her.

4. It is the contention of the petitioner that the Government is not justified in refusing to release the arrears of family pension to her in view of Rule 136. It is true that 126 Part III enables a pensioner to draw pension through an authorised agent if permitted by the Government. Rules 129 postulates that "a pensioner who resides in the State may draw his pension through a duly authorised agent possessing a legally valid Power of Attorney who must produce a life certificate as referred to in Rule 126 and Rule 127 on each occasion, unless the duly authorised agent has executed an indemnity bond to refund overpayment in which case he has to produce the life certificate as aforesaid atleast once in a year.

5. As noticed already, petitioner had drawn pension for a few months after the death of her husband. Thereafter she had left the country and gone to America . For about 13 years petitioner had failed to draw family pension, may be for her own reasons.

6. In this context it is pertinent to note that Rule 135 postulates that pension undrawn for more than 3 years ceases to be payable. It is of course true that Rule 136 stipulates that if the pensioner appears afterwards, the disbursing officer may reclaim the Pension Payment Order and renew his payments. But the arrears cannot be paid (a) without the orders of the Audit Officer and (b) if the pension in arrears is to be paid for the first time or if the amount of arrears exceeds Rs.75,000/-, without the previous sanction of the Government to be

obtained through the Audit Officer. The above provisions contained in Rule 136 give discretion to the Government to consider the question whether a pensioner who has not claimed her pension in time can be allowed to claim the arrears if the total sum exceeds Rs.75,000/-.

7. Rule 294 in Chapter VII of Kerala Treasury Code also provides that the arrears cannot be paid to the pensioner without obtaining orders from the Government. On January 17, 2006 Government of Kerala had issued a circular (No.3/2000/Find) clarifying that non-drawl of pension for a long period was not envisaged in the relevant service rules of the Treasury Code. After referring to the relevant Rules the circular had made it clear that "the revalidation of Pension Payment Orders and drawal of arrears of such non-drawal periods in terms of Rule 136, Part III KSR read with Article 294 of the Kerala Treasury Code Volume I will be invoked in future very sparingly and only in deserving circumstances and not on vague reasons like out of station etc."

8. Having heard learned counsel for the petitioner and having regard to the peculiar facts and circumstances of the case I do not find any illegality or irregularity in the stand taken by the Government and the Auditor General. As mentioned earlier, petitioner had failed to draw the family pension for nearly 13 years. She has not stated any valid reason for non-drawal of her pension, rather than indicating that she had gone to America "seeking income and shelter". Petitioner cannot expect the Government to release arrears of pension the moment she chooses to come back to India and make a claim. The Government is entitled to exercise its discretionary power in a matter like this, particularly in view of the rules quoted above. Petitioner cannot have

the best of both worlds. It may be true that pension is not a bounty from the State; but still it has to be remembered that millions of people are starving in this country. The Govt. can utilise the "left overs" from the pension fund for betterment of the society and particularly for implementation of Schemes for the uplift of the poor.

9. Petitioner has got the Pension Payment Order revived in her favour after coming back to the country and she has been drawing pension since June 2005. But still in Ext.P3 she has informed respondent No.2 that she is planning to got back to America immediately. This aspect also persuades me not to interfere with the order passed by the Government. I do not find any reason to exercise the discretionary power vested with this Court under Article 226 of the Constitution to interfere with Exts.P5 and P6 orders. The writ petition is without any merit. It is accordingly dismissed in limine.

A.K. Basheer
Judge.

an.